

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ALASKA DENTAL ARTS, LLC,

Applicant,

vs.

Court of Appeals No. A-13816

SETH ALBERT LOOKHART,
SHAUNA CRANFORD, LOOKHART
DENTAL, LLC, STATE OF
ALASKA, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,
COLUMBIA BANK, AND
SUPERIOR COURT FOR THE
STATE OF ALASKA,

Respondents.

Trial Court No. 3AN-17-02990CR / 3AN-17-02991CR / 3AN-17-02992CR

REPLY TO LOOKHART'S RESPONSE TO ORIGINAL APPLICATION

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

Alaska Dental Arts and its owners (ADA) filed an original application arguing that it has priority over the Department of Health and Social Services (DHSS) regarding certain funds that Superior Court Judge Michael Wolverton concluded should be released to DHSS following Seth Lookhart's conviction. Lookhart filed a response arguing that (1) the original application is not ripe, and (2) the superior court lacked authority to dispose of the funds. This Court invited the other parties to this litigation to respond.

The Criminal Division of the Department of Law (as distinct from DHSS) previously stated that it would not take a position on the question presented, because doing so would require advocating for one victim and against the other, but it would continue to seek and defend restitution judgments on behalf of victims generally. Because Lookhart's arguments go beyond the issue presented in the original application, and because the Criminal Division has an interest in the orderly resolution of Lookhart's claims (as opposed to ADA or DHSS's claims), the Criminal Division will briefly respond.

Lookhart claims that the question in the original application is not yet ripe because (1) he has filed an appeal of his conviction and sentence, and (2) there is a pending motion in the superior court to stay execution of the order from which ADA has sought relief. [Resp. of Lookhart at 14] These arguments are unpersuasive. First, because a motion to stay the order is currently pending in the superior court, it would be premature for this Court to stay or reject the original application on that ground. Second, Lookhart may intend to challenge his sentence, but he has not raised a challenge to the order at issue. *See* Statement of Points on Appeal, *Lookhart v. State*, No. A-13752 (Oct. 26, 2020). And although reversal of his convictions would nullify the order, Lookhart has not shown any likelihood of success on appeal. The problem is not that the

question is not yet ripe, it is that the question may become moot if Lookhart is successful in his direct appeal (and following any retrial).

As things currently stand, there is a court order directing the funds at issue to be released to DHSS. This presents a sufficiently genuine, concrete, and immediate controversy for the victims to challenge or defend the order if they wish. *See Brause v. State, Dep't of Health & Soc. Servs.*, 21 P.3d 357, 358-60 (Alaska 2001) (discussing ripeness factors). Neither victim should have to wait years to vindicate their rights while Lookhart's case makes its way through the appellate process. The burden should be on Lookhart to justify delaying the resolution of the question. *Cf.* AS 12.30.040(a) (bail pending appeal); Appellate Rule 205 (stay pending appeal in civil case); Appellate Rule 206 (stay of execution and release pending appeal in criminal case). Lookhart has not justified delaying the resolution of the victims' respective rights.

Lookhart's second argument is that the superior court lacked authority to dispose of the funds at issue. But Lookhart's argument would expand the original application beyond the discrete legal issue raised by ADA. If Lookhart seeks relief from the court's order, he must do so in his direct appeal rather than under the guise of a response to a victim's original application. *See* Appellate Rule 404(a)(1) ("An original application for relief may be filed . . . whenever relief is not available from any other court and cannot be obtained through the process of appeal, petition for review, or

Department of Law, Criminal Division

Office of Criminal Appeals

1031 W. 4th Avenue, Ste 200

Anchorage, AK 99501

Phone: (907) 269-6260 Fax: (907) 276-3697


Email: ocapleadings@alaska.gov

petition for hearing.”). Lookhart’s response is not a substitute for full briefing with a transcript and record on appeal. In a direct appeal, Lookhart would be required to identify where in the superior court he presented this issue or, if he did not preserve an objection, explain why it was raised for the first time on appeal. Appellate Rule 212(c)(8)(B). Lookhart has not identified where he raised this claim in the superior court. Although he made a cursory argument against restitution, it does not appear that he ever disputed the court’s authority to issue the order in question. [Appx. at 214, 231-32] Indeed, Lookhart was voluntarily absent from the hearing where the other litigants and the court discussed how to dispose of the funds. [Appx. at 243]

Lookhart’s victims, ADA and DHSS, have a greater interest than the Criminal Division in the question in the original application, and they may have different perspectives to offer. But on its face, the claim appears to be ripe for the victims to seek review of their respective positions. And this Court should not expand the scope of the original application to issues that Lookhart should litigate, if at all, in his direct appeal.

DATED September 7, 2021.

TREG R. TAYLOR
ATTORNEY GENERAL

By: 
Donald Soderstrom (1205046)
Assistant Attorney General

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CERTIFICATE OF SERVICE AND TYPEFACE

I, Sylva M. Ferry, state that I am employed by the Alaska Department of Law, Office of Criminal Appeals, and that on September 7, 2021, I emailed a copy of the State's REPLY TO LOOKHART'S RESPONSE TO ORIGINAL APPLICATION and this CERTIFICATE OF SERVICE AND TYPEFACE in the above-titled case to:

John J. Tiemessen
jjt@cplawak.com

Scott Friend
scott.friend@alaska.gov

Renee McFarland
renee.mcfarland@alaska.gov

Bruce A. Moore
brucem@lbblawyers.com

Department of Law, Criminal Division

Office of Criminal Appeals

1031 W. 4th Avenue, Ste 200

Anchorage, AK 99501

Phone: (907) 269-6260 Fax: (907) 276-3697

Email: ocapleadings@alaska.gov

Philip E. Shanahan
shanahan@alaskabar.org

Douglas A. Wooliver
dwooliver@akcourts.us

Kevin T. Fitzgerald
kevin@impc-law.com

Nancy B. Meade
nmeade@akcourts.us

I further certify, pursuant to App. R. 513.5, that the font used in the
aforementioned documents is Century Schoolbook 13 point.


Sylva M. Ferry